

# **EXHIBIT B**

L & T INDEX NO.

/2011

CIVIL COURT OF THE  
CITY OF NEW YORK  
COUNTY OF NEW YORK:  
NON-HOUSING PART

40 CPS ASSOCIATES LLC.

Petitioner/Landlord,

-against-

MAJESTIC SPORTS LTD. D/B/A  
MICKEY MANTLES RESTAURANT  
40 CENTRAL PARK SOUTH AND 41  
WEST 58TH STREET  
COVERING THE AREAS DESCRIBED  
AS A PORTION OF THE GROUND  
FLOOR AND PORTIONS OF CELLAR,  
MORE PARTICULARLY DESCRIBED  
ON THE DRAWINGS ATTACHED  
HERETO LABELED EXHIBIT A AND  
EXHIBIT B  
NEW YORK, NY 10017

Respondent/Tenant,

-and-

"XYZ CORP."

Respondent/Undertenant.

**NOTICE OF PETITION -  
COMMERCIAL NON-PAYMENT**

  
MITOFSKY, SHAPIRO, NEVILLE &  
HAZEN, LLP

Attorneys for Petitioner  
152 Madison Ave. - 3<sup>rd</sup> Floor  
NEW YORK, NEW YORK 10016  
212-736-0500

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK- NON-HOUSING PART

40 CPS ASSOCIATES LLC.

-X

Index No. L & T

Petitioner/Landlord,

-against-

**NOTICE OF PETITION  
NON-PAYMENT  
COMMERCIAL**

MAJESTIC SPORTS LTD. D/B/A MICKEY MANTLES RESTAURANT  
40 CENTRAL PARK SOUTH AND 41 WEST 58TH STREET  
COVERING THE AREAS DESCRIBED AS A PORTION OF THE GROUND FLOOR  
AND PORTIONS OF CELLAR, MORE PARTICULARLY DESCRIBED ON THE  
DRAWINGS ATTACHED HERETO LABELED EXHIBIT A AND EXHIBIT B  
NEW YORK, NY 10017

Respondent/Tenant

-and-

Business Address:  
c/o Mitofsky, Shapiro,  
Neville & Hazen, LLP  
152 Madison Ave. - 3<sup>rd</sup> Floor  
New York, New York

"XYZ CORP."

Respondent/Undertenant.\*

-X

To the Respondent(s) above-named and described, in possession of the  
premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that the annexed petition of 40 CPS ASSOCIATES  
LLC., verified on August 18, 2011 requests a final judgment of eviction, awarding to  
the petitioner possession of premises described as follows: COVERING THE  
AREAS DESCRIBED AS A PORTION OF THE GROUND FLOOR AND PORTIONS  
OF CELLAR, MORE PARTICULARLY DESCRIBED ON THE DRAWINGS  
ATTACHED HERETO LABELED EXHIBIT A AND EXHIBIT B, consisting of all  
rooms, in premises known as and located at 40 CENTRAL PARK SOUTH AND 41  
WEST 58TH STREET, County of New York, in the City of New York, as demanded  
in the petition.

TAKE NOTICE also that demand is made in the petition for judgment against you  
in the sum of \$133,623.71 with interest from Aug. 2011.

TAKE NOTICE also that WITHIN FIVE DAYS (5) after service of this Notice of Petition upon you, you must answer, either orally before the Clerk of the Court at 111 Centre Street, County of New York, City and State of New York, or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the petitioner, unless such defense or counterclaim is precluded by law or prior agreement of the parties. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than three (3) nor more than eight (8) days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for FIVE (5) days from the date of such judgment.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that under Section 745 of the Real Property Actions and Proceedings Law, you may be required by the Court to make a rent deposit, or a rent payment to the petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination has not been made by the Court within 30 days of the first appearance. Failure to comply with an initial rent deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits of payments may result in an immediate trial on the issues raised in your answer.

In the event of your failure to answer and appear, final judgment by default may be entered against you for the relief demanded in the petition.

Dated: August 18, 2011

---

Carol Alt  
Chief Clerk of the Civil Court  
of the City of New York

\* Name(s) of Undertenant(s) being fictitious and unknown to Petitioner, intended as the person(s) being in possession of the premises herein described.

**IMPORTANT TO TENANT** – If you are dependent upon a person in the military service of the United States or the State of New York, advise the Clerk immediately, in order to protect your rights.

40 CPS ASSOCIATES LLC.

-against-  
Petitioner/Landlord,

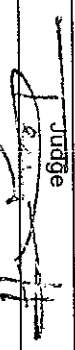
MAJESTIC SPORTS LTD. D/B/A MICKEY  
MANTLES RESTAURANT  
40 CENTRAL PARK SOUTH AND 41 WEST  
58TH STREET  
COVERING THE AREAS DESCRIBED AS A  
PORTION OF THE GROUND FLOOR AND  
PORTIONS OF CELLAR, MORE  
PARTICULARLY DESCRIBED ON THE  
DRAWINGS ATTACHED HERETO LABELED  
EXHIBIT A AND EXHIBIT B  
NEW YORK, NY 10017  
Respondent/Tenant,

-and-  
"XYZ CORP."  
Respondent/Undertenant,

PETITION - COMMERCIAL NON-PAYMENT

AMOUNT CLAIMED: \$133,623.71

Notice of Petition  
Served On  
Notice of Petition  
Returned On  
Notice of Petition  
Issued On  
Tenant appears  
On  
but fails to answer.  
Tenant answers on  
Answer is  
Set for trial on  
Landlord notified on  
Sufficiency of answer referred  
to court  
Raises

Judge  


MITOFSKY, SHAPIRO, NEVILLE & HAZEN, LLP  
152 Madison Avenue  
New York, NY 10016  
212.736.0500

The PETITION of 40 CPS ASSOCIATES LLC., upon information and belief, respectfully shows that:

1. Petitioner 40 CPS ASSOCIATES LLC., is owner and landlord of the subject premises.
2. Respondent-tenant, MAJESTIC SPORTS LTD. D/B/A MICKEY MANTLES RESTAURANT, is the tenant of the subject premises, who entered into possession pursuant to a written rental agreement made August 1, 1987 for a term of fifteen (15) years, commencing August 1, 1987 and expiring July 31, 2002, between 40 Central Park South Incorporated, Petitioner's predecessor-in-interest and Liederman/Lowy Ventures, Inc., Respondent's predecessor-in-interest and extended pursuant to a Lease Modification dated March 23, 2000 between 40 Central Park South Incorporated, Petitioner's predecessor-in-interest and Respondent, through July 31, 2010 and extended pursuant to a Second Lease Modification dated December 23, 2009 between Respondent-tenant and 40 CPS ASSOCIATES LLC., through July 21, 2020, wherein respondent promised to pay to landlord as base rent \$70,416.67 each month in advance on the 1st day of each month.

3. Respondent-Tenant "XYZ CORP." is Undertenant of the aforementioned respondent/tenant.
4. Respondent is now in possession of said premises, and said premises are the business of the Respondent-tenant and or any Respondents-Under tenants.

5. The premises from which removal is sought were rented for business purposes and are described as follows: COVERING THE AREAS DESCRIBED AS A PORTION OF THE GROUND FLOOR AND PORTIONS OF CELLAR, MORE PARTICULARLY DESCRIBED ON THE DRAWINGS ATTACHED HERETO LABELED EXHIBIT A AND EXHIBIT B, consisting of all rooms, in premises known as and located at 40 CENTRAL PARK SOUTH AND 41 WEST 58TH STREET, NEW YORK, NY 10017 which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York.

6. Pursuant to said agreement there was due to Petitioner-landlord from Respondent-tenant rent as follows:

Jul. 2011	\$35,208.34	RENT
Jul. 2011	\$15,420.31	REAL ESTATE TAX
Aug. 2011	\$70,416.67	RENT
Aug. 2011	\$12,078.39	WATER CHARGES
Legal Fees	\$ 500.00	

Respondent-tenant has defaulted in the payment thereof and the total rent in arrears is \$133,623.71

7. The rent sought herein has been demanded by a Five Day Notice since the same became due. A copy of said demand, with proof of service, is annexed hereto, and deemed incorporated into this petition.
8. Respondent holds over and continues in possession of the premises without landlord's permission after said default.
9. The premises are not subject to Rent Control, Rent Stabilization or the Emergency Tenant Protection Act of 1974 because they are rented for business purposes.

10. The premises are a multiple dwelling and pursuant to the Housing Maintenance Code Article 4.1 there is a currently effective registration statement on file with the Office of Code Enforcement in which the owner has designated the managing agent named below, a natural person over 21 years of age, to be in control of and responsible for the maintenance and operation of the dwelling.

Wherefore, Petitioner requests final judgment: awarding possession of the subject premises to the Petitioner/landlord; issuance of a warrant to remove respondent from the possession thereof; judgment for rent in arrears against Respondent-Tenant in the sum of \$133,623.71; interest accrued from Aug. 2011; costs, disbursements and reasonable attorneys fees as incurred herein.


Dated: August 18, 2011  
40 CPS ASSOCIATES LLC., Petitioner

ATTORNEY'S VERIFICATION

State of New York, County of New York

The undersigned affirms under penalty of perjury that she is duly admitted to practice law in N.Y. State and that she is the attorney for the petitioner; that she has read the foregoing petition and knows the contents thereof; that the same are true to her own knowledge except as to those matters stated to be upon information and belief, stated upon her knowledge and/or records provided by the petitioner, its agents, and/or employees and contained in the file in the attorney's office. This verification is made for petitioner's convenience and pursuant to the provisions of RPAPL 741.

Dated: August 18, 2011



MITOFSKY SHAPIRO NEVILLE & HAZEN, LLP  
Attorneys for Petitioner/Landlord

By: Terry Hazen  
152 Madison Avenue  
New York, NY 10016  
212.736.0500

**ADDITIONAL MAILING**  
FRIDMAN LAW GROUP, PLLC.  
ATTN: JERALD M. TENENBAUM, ESQ.  
287 Spring Street  
New York, NY 10013

NOTICE TO TENANT  
FIVE DAY COMMERCIAL NOTICE

**MAJECTIC SPORTS LTD**

d/b/a Mickey Mantles Restaurant

40 Central Park South and 41 West 57<sup>th</sup> Street

New York, New York 10017

*(covering the areas described as a portion of the ground floor and portions of cellar, more particularly described on the drawings attached hereto labeled Exhibit A and Exhibit B.)*

PLEASE TAKE NOTICE that you are hereby required paying to **40 CPS ASSOCIATES, LLC**, landlord of the above described premises, the sum of **\$133,123.71** for rent of the premises as follows:

July 2011	\$35,208.34	Rent
July 2011	\$15,420.31	Real Estate Tax
August 2011	\$70,416.67	Rent
August 2011	\$12,078.39	Water Charges

You are required to pay this sum on or before August 15, 2011, that day being no less than five days from the day of service of this notice, or to give up possession of the premises to the landlord. If you fail to pay or to give up the premises, the landlord will commence summary proceedings against you to recover possession of the premises.

Please take further notice that this demand is made without prejudice to any and all other claims Landlord may have against you.

NOTA DE CINCO DIAS COMMERCIAL

**POR FAVOR SIRVASE A TOMAR NOTA** de que usted esta requerido, por este medio, de pagar a **40 CPS ASSOCIATES, LLC**, dueno de las propiedades arriba descritas por la suma **\$133,123.71** por la renta de las propiedades:

July 2011	\$35,208.34	Rent
July 2011	\$15,420.31	Real Estate Tax
August 2011	\$70,416.67	Rent
August 2011	\$12,078.39	Water Charges

Usted esta requerido de pagar esta suma antes o en esta fecha Agosto 15, 2011, esta fecha no siendo menos de los cinco dias al recibir esta nota, o entregar al dueno la posesion de dichas propiedades. Si usted falla en pagar o en entregar las propiedades, el dueno de las propiedades se vera obligado a proceder legalmente para recuperar las posesion de dichas propiedades.

Dated: New York, New York  
August 5, 2011

**40 CPS ASSOCIATES, LLC**

By: Atco Properties & Management, Inc., Manager

By: 

PETER L. DICAPUA  
C.O.O.

ADDITIONAL MAILING:

FRIDMAN LAW GROUP, PLLC.  
287 SPRING STREET

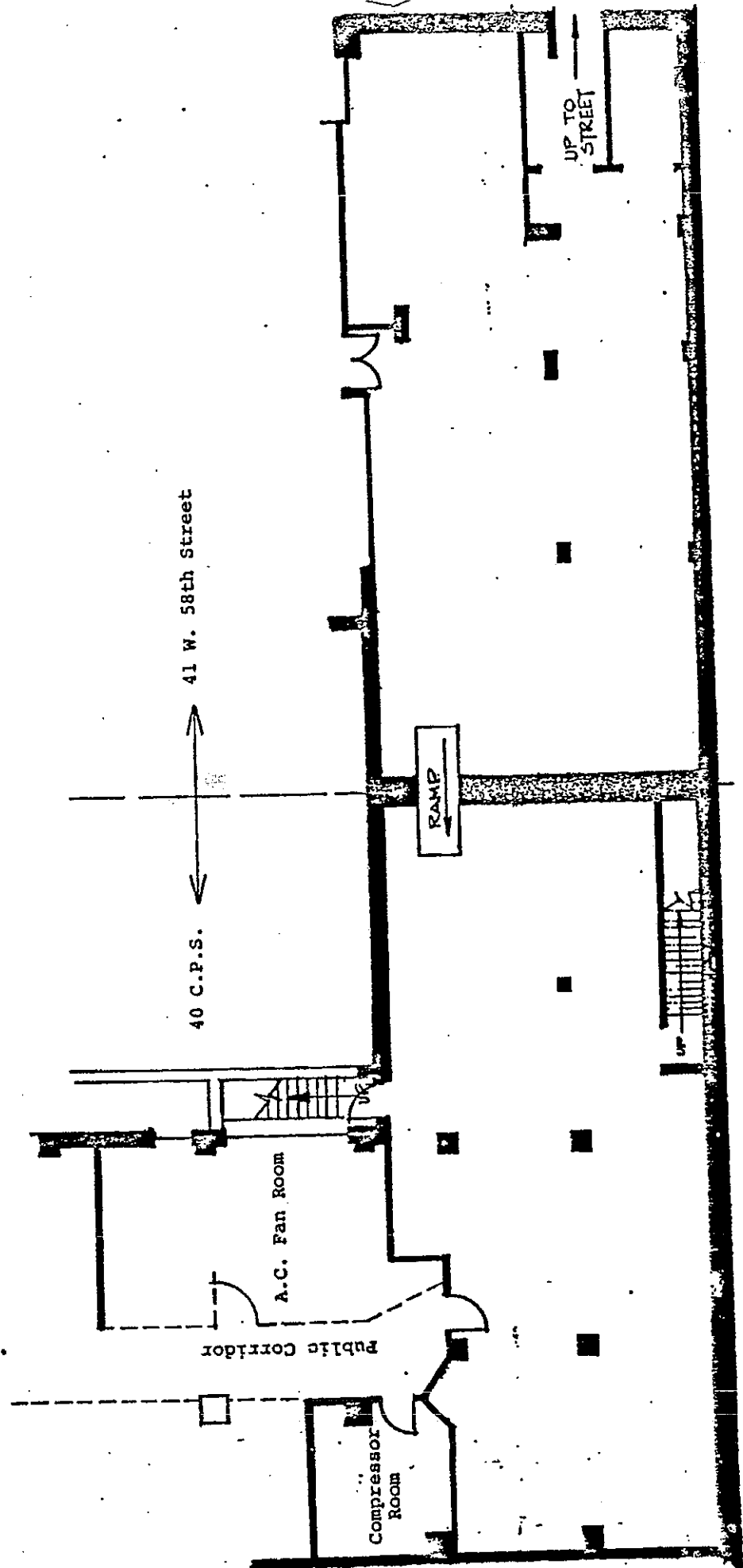
NEW YORK, NY 10013

ATTN: JERALD M. TENENBAUM, ESQ.

EXHIBIT B

40 Central Park South  
Cellar Plan

All Areas, Dimensions  
And Conditions  
Are Approximate





## AFFIDAVIT OF SERVICE

State of

County of

Court

Case Number: \_\_\_\_\_

Landlord:  
**40 CPS ASSOCIATES LLC**

vs.

Tenant:  
**MAJESTIC SPORTS LTD. D/B/A MICKEY MANTLES RESTAURANT 40  
CENTRAL PARK SOUTH AND 41 WEST 58TH STREET NY NY 10017  
(COVERING THE AREAS DESCRIBED AS A PORTION OF THE GROUND  
FLOOR AND PORTIONS OF CELLAR, MORE PARTICULARLY DESCRIBED  
ON THE DRAWINGS ATTACHED HERETO LABELED EXHIBIT B)**

For:  
**MITOFSKY SHAPIRO NEVILLE & HAZEN  
152 Madison Avenue  
New York, NY 10016**

Received these papers to be served on **MAJESTIC SPORTS LTD. D/B/A MICKEY MANTLES RESTAURANT, 40  
CENTRAL PARK SOUTH AND 41 WEST 58TH, STREET, NEW YORK, NY 10017.**

I, Charles Mon, being duly sworn, depose and say that on the **5th day of August, 2011** at **4:30 pm, I:**

**SUBSTITUTE** served by delivering true copies of the **FIVE DAY COMMERCIAL NOTICE** to: **ALTA HERNANDEZ** as **MANAGER**, a person employed there in, employed at the premises sought to be recovered and accepted service for **MAJESTIC SPORTS LTD. D/B/A MICKEY MANTLES RESTAURANT** at the address of: **40 CENTRAL PARK SOUTH AND 41 WEST 58TH, STREET, NEW YORK, NY 10017**, the within named person's usual place of employment Deponent completed service by mailing true copies of the **FIVE DAY COMMERCIAL NOTICE** to each respondent separately in postpaid envelopes to the address **40 CENTRAL PARK SOUTH AND 41 WEST 58TH, STREET, NEW YORK, NY 10017** bearing the words "Personal & Confidential" by certified RRR and 1st class mail on **8/6/2011** and placed in an official depository of the U.S.P.S. in the State of New York.

**Additional Information pertaining to this Service:**

THERE WAS AN ADDITIONAL MAILING OF THE 5 DAY COMMERCIAL NOTICE SENT TO: FRIDMAN LAW GROUP PLLC. 287 SPRING STREET NY NY 10013 ATTN: JERALD M. TENENBAUM ESQ. BY CERTIFIED AND 1ST CLASS MAIL ON 8/6/11 MARKED PERSONAL AND CONFIDENTIAL FROM NY STATE

**Description of Person Served:** Age: 35, Sex: F, Race/Skin Color: White, Height: 5'5, Weight: 155, Hair: Brown, Glasses: N

I certify that I am over the age of 18 and reside in queens ny and am not a party to the above action, and am a licensed Process Server, in good standing, in the judicial circuit in which the process was served.

**STEPHEN MICHAEL  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01M1-4850093  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MAY 27, 2014**

Subscribed and Sworn to before me on the 15th day of  
August, 2011 by the affiant who is personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
**Charles Mon**  
0921878

Our Job Serial Number: CFM-2011001806

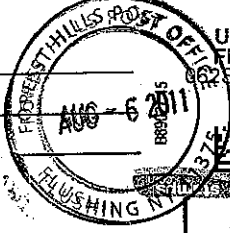
U.S. POSTAL SERVICE		CERTIFICATE OF MAILING		Stamps
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE. POSTMASTER				
Received From:		cmp		<b>\$1.150</b> US POSTAGE FIRST-CLASS 06230906949124 11375 
10824 71st avenue 4-F		forest hills ny 11375		
FRIDMAN LAW GROUP, LLC 287 SPRING STREET NEW YORK, NY 10013 ATTN: JERALD M. TENENBAUM, ESQ RE, MAJECTIC SPORTS LTD				

PS Form 3817, January 2001

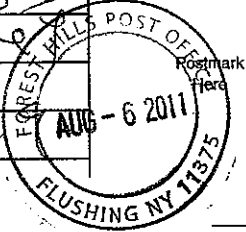
U.S. Postal Service™	
<b>CERTIFIED MAIL™ RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 28.75
Certified Fee	0.40
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	3.29
FRIDMAN LAW GROUP, LLC 287 SPRING STREET NEW YORK, NY 10013 ATTN: JERALD M. TENENBAUM, ESQ RE, MAJECTIC SPORTS LTD	

7010 3090 0001 6404 2620

PS Form 3800, August 2006 See Reverse for Instructions

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING		Affix fee here in stamps or meter postage and
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL DOES NOT PROVIDE POSTMASTER				
Registered From	cmp			
10824 71st avenue 4-F				
forest hills ny 11375				
MAJECTIC SPORTS LTD D/B/A MICKEY MANTLES RESTAURANT 40 CENTRAL PARK SOUTH AND 41 WEST 58 <sup>TH</sup> STREET. NEW YORK, NY 10017		 <p><b>\$1.150</b> US POSTAGE FIRST-CLASS 950006949124 11375</p>		

PS Form 3817, January 2001

U.S. Postal Service™		CERTIFIED MAIL™ RECEIPT		(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>				
<b>OFFICIAL USE</b>				
Postage	\$	2.85		
Certified Fee		6.00		
Return Receipt Fee (Endorsement Required)				
Restricted Delivery Fee (Endorsement Required)		3.20		
				
MAJECTIC SPORTS LTD D/B/A MICKEY MANTLES RESTAURANT 40 CENTRAL PARK SOUTH AND 41 WEST 58 <sup>TH</sup> STREET. NEW YORK, NY 10017				

7010 3090 0001 6904 2613